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An Act To Amend the Law Concerning Overboard Discharge Systems

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, since 2003, prior to transferring ownership of property containing an overboard discharge system, the parties to the transfer have been required to determine the feasibility of technologically proven alternatives to the overboard discharge system. If an alternative is identified, the alternative system must be installed and the overboard discharge system must be removed; and

Whereas, parties who transferred ownership of property containing an overboard discharge system without determining the feasibility of alternatives and without removing the overboard discharge system are subject to substantial penalties until the requirements of the law are changed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §413, sub-§3, as amended by PL 2009, c. 654, §3, is further amended to read:

3. Transfer of ownership. Application for transfer of a license must be made no later than 2 weeks after the transfer of ownership or interest in the source of the discharge is completed. If a person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, except that the parties to the transfer are jointly and severally liable for any violation until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

~~Except when it has been demonstrated within 5 years prior to a transfer, or some other time period acceptable to the department, that there is no technologically proven alternative to an overboard discharge, prior to transfer of ownership of property containing an overboard discharge, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with the plumbing standards adopted by the Department of Health and Human Services pursuant to Title 22, section 42 based on documentation from a licensed site evaluator provided by the applicant and approved by the Department of Environmental Protection. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharge. If an alternative to the overboard discharge is identified, the alternative system must be installed within 90 days of property~~

transfer, except that, if soil conditions are poor due to seasonal weather, the alternative may be installed as soon as soil conditions permit. The installation of an alternative to the overboard discharge may be eligible for funding under section 411-A.

This subsection applies to licenses issued before September 1, 2010.

Sec. 2. 38 MRSA §413, sub-§3-A, as enacted by PL 2009, c. 654, §4, is repealed.

Sec. 3. 38 MRSA §414, sub-§3-C is enacted to read:

3-C. Outreach to owners of overboard discharge systems. The department shall provide education and outreach to owners of overboard discharge systems on the importance of proper maintenance of an overboard discharge system and instruction on how to properly maintain an overboard discharge system.

Sec. 4. 38 MRSA §414-A, sub-§1-B, ¶A, as amended by PL 2009, c. 654, §5, is further amended to read:

A. The department shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of licensing when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that will not result in an overboard discharge.

(1) The department's finding must be based on documentation from a licensed site evaluator provided by the overboard discharge owner and approved by the department. The licensed site evaluator shall demonstrate experience in designing replacement systems for overboard discharges.

(2) If a technologically proven alternative system is identified and is eligible for grant funding according to the cost-share schedule under section 411-A and grant funding is available, the alternative system must be installed within 180 days of written notification from the department, unless soil conditions are poor due to seasonal weather, in which case the alternative may be installed as soon as soil conditions permit.

(3) If a technologically proven alternative system eligible for grant funding according to the cost-share schedule is identified and funding is not available, then the owner of the overboard discharge is not required to install the system until grant funds are available ~~or as provided in section 413, subsection 3.~~ The department may determine that grant funds are not available when there are insufficient funds available for all alternative systems and the alternative system is not one of the systems identified as a priority for funding from available grant funds by the department.

(4) If a technologically proven alternative system for an overboard discharge from a residence is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2-A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012.

(5) If a technologically proven alternative system for an overboard discharge from a commercial establishment is identified and is not eligible for grant funding according to the cost-share schedule under section 411-A, subsection 2-A and the overboard discharge is subject to a license that expires on or after July 2, 2010 and prior to July 2, 2012, the department may not require the alternative to be installed earlier than July 2, 2012.

Sec. 5. Retroactivity. This Act is retroactive to January 1, 2004.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill removes the requirement that, prior to transferring ownership of property containing an overboard discharge system, the parties to the transfer must determine the feasibility of technologically proven alternatives to the overboard discharge system and install the alternative system if one is identified. The bill also directs the Department of Environmental Protection to provide education and outreach to owners of overboard discharge systems. The bill makes the changes to the law retroactive to January 1, 2004.